

REMARKS/ARGUMENTS

Claims 1-9 were pending in this application. New claims 10-12 are presented herein. No claims were amended. Upon entry of this amendment, claims 1-12 will be pending.

An RCE is being filed herewith. Prior to the RCE, the Examiner issued an Advisory Action on August 9, 2004 in response to a Request for Reconsideration filed by Applicant on May 24, 2004. In that Advisory Action, the Examiner refused entry of the Request for Reconsideration and maintained the rejection.

In the Final Office Action, claims 1-9 were rejected under 35 USC §102(b) as being anticipated by "*TCP-Like Congestion Control for Layered Multicast Data Transfer*" by Vicisano et al. (hereinafter "Vicisano"). Similar arguments for rejection were presented in the Advisory Action. However, the basis for the rejection stated in the Advisory Action is not supported by the reference.

As explained, claim 1 of the present application recites "logic for reducing the sending rate of at least one of the plurality of layers over time." Using that logic, a layer's sending rate would be reduced over time. Contrary to the Examiner's assertion, Applicant does not admit that the cited reference discloses that layer's sending rate would be reduced over time. In fact, the reference does not disclose that and Applicant's statements cannot be taken to mean that. Vicisano's layer's rates are constant and a receiver reduces its rate over time by leaving layers. By contrast, with the claimed invention, a receiver's receiving rate would go down over time even if it maintained membership of the same set of layers.

As explained in the specification with respect to particular examples, a receiver need do nothing to reduce its aggregate reception rate but maintain membership in the same set of layers. To increase or maintain an aggregate reception rate, the receiver would need to join additional layers. This is in contrast to the teachings of Vicisano, wherein a receiver that did nothing but maintain membership in the same set of layers would maintain the same aggregate reception rate and to increase or decrease an aggregate reception rate, the receiver would join or leave layers or a signal to the sender congestion control information.

To summarize, Vicisano provides no disclosure or suggestion that the sending rate of a layer is reduced over time. Since claim 1 recites “logic for reducing the sending rate of at least one of the plurality of layers over time”, claim 2 depends from claim 1, claim 3 recites “reducing the sending rates for each of the layers over time”, claims 4-7 depend from claim 3, claim 8 includes “reducing a sending rate for a first one of the plurality of dynamic layers over time” and claim 9 depends from claim 8, each of the pending claims is allowable over Vicisano and the rejection should be withdrawn.

Other claimed elements are also not disclosed or suggested by Vicisano.

For example, claim 4 recites a step of offsetting a reduced reception rate at a host due to a reduced sending rate for each of the layers by the host joining one or more additional layers, if a reception rate at the host is to be maintained. Since the sending rates for Vicisano’s layers do not reduce over time as claimed, there would be no need to take an offsetting action of joining one or more additional layers to maintain a reception rate. In the Final Office Action, page 5, first paragraph, the Examiner rejected claim 4 citing to Vicisano, page 996 (“A. Relation between throughput and loss rate”; end of second column) and page 998 (“III. Congestion Control for Multicast Layered Data”; middle of second column of page 997 to middle of first column of page 998). The latter citation actually appears to teach away from the claimed invention in that receivers “modulate the receive rate by joining/leaving layers” (Vicisano, page 997, second column, 4-5 lines from bottom), rather than the claimed reducing of sending rates for layers over time and joining one or more additional layers to maintain a reception rate.

As another example, claim 8 recites a step of “concurrently with the step of reducing, increasing a sending rate of at least one other of the plurality of dynamic layers, thereby maintaining the aggregate sending rate for the plurality of dynamic layers”. Since Vicisano does not reduce sending rates of layers, the claimed step of increasing would not be needed to maintain an aggregate sending rate.

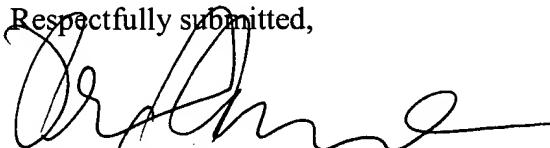
In a telephone call with the Examiner on September 28, 2004, the undersigned requested that the Examiner review the Vicisano reference, the currently pending claims and the Advisory Action mailed August 9, 2004, with a view to reconsidering the rejection maintained in the Advisory Action. In particular, the undersigned pointed out that each of the independent

claims can be differentiated from Vicisano because, contrary to the Examiner's statements, Vicisano does not teach that the sending rate of a given layer is reduced over time. Instead, a host in Vicisano's network would reduce its bandwidth by leaving a layer (possibly followed by joining a lower-bandwidth layer). Thus, Vicisano does not disclose or suggest claim 1's "logic for reducing the sending rate of at least one of the plurality of layers over time", claim 3's step of "reducing the sending rates of each of the layers over time" or claim 8's step of "reducing a sending rate for a first one of the plurality of dynamic layers".

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

Philip H. Albert
Reg. No. 35,819

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: 415-576-0200 Fax: 415-576-0300
PHA/jtc